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IN THE

Supreme Court of the United States

OCTOBER TERM, 1957

NO. 789

CHA'O LI CHI,

Petitioner,

—v.—

JOHN L. MURFF, District Director of Immigration and Naturalization for the District of New York,

Respondent.

PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SECOND CIRCUIT

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IN THE

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No. .....

CHA'O LI CHI,

Petitioner,

—v.—

JOHN L. MURFF, District Director of Immigration and Naturalization for the District of New York,

Respondent.

PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SECOND CIRCUIT

Cha'o Li Chi prays that a writ of certiorari issue to review the judgment of the United States Court of Appeals for the Second Circuit entered on December 31, 1957 affirming the judgment of the District Court for the Southern District of New York which had granted respondent's motion for summary judgment and denied the petitioner's petition for a judicial review of a prior administrative decision denying petitioner the relief provided by §6 of the Refugee Relief Act of 1953 (50 U. S. C. App. 1971d).

Opinions Below

The two opinions of the District Court (R. 3-9, 12-15)* are not reported. The opinion of the court below (App. 22-31) has not yet been reported.

* References to the Appellant's Appendix in the court below filed with this petition are designated "R" and references to the appendix to this petition are designated "App."

Jurisdiction

The judgment of the court below was dated and entered on December 31, 1957. The jurisdiction of this Court is invoked under 28 U. S. C. §§1254(1) and 2101(c).

Questions Presented

1. Whether Congress in the Refugee Relief Act of 1953 has authorized the use of confidential information by the Attorney General and his subordinates in determining applications for permanent residence under §6 of the Act.

2. Whether the Administrative Procedure Act of 1946 prohibits the use of confidential information in determining applications for permanent residence under §6 of the 1953 Act.

3. Whether use of the confidential information, if authorized by Congress, denied petitioner due process of law.

4. Even if confidential information were not the basis of the adverse administrative decision, whether that decision denied petitioner due process of law and a fair hearing because it was not based on and was contrary to all the evidence that petitioner actually feared persecution if deported to China.

Statute Involved

Section 6 of the Refugee Relief Act of 1953 (67 Stat. 400), as amended by the Act of August 3, 1954 (68 Stat. 1044) provides in part (50 U. S. C. App. 1971(d)):

> "Sec. 6. Any alien who establishes that prior to July 1, 1953, he lawfully entered the United States as

a bona fide nonimmigrant and that he is unable to return to the country of his birth, or nationality, or last residence because of persecution or fear of persecution on account of race, religion, or political opinion, or who was brought to the United States from other American republics for internment, may, not later than June 30, 1955, apply to the Attorney General of the United States for an adjustment of his immigration status. If the Attorney General shall, upon consideration of all the facts and circumstances of the case, determine that such alien has been of good moral character for the preceding five years and that the alien was physically present in the United States on the date of enactment of this Act and is otherwise qualified under all other provisions of the Immigration and Nationality Act except that the quota to which he is chargeable is oversubscribed, the Attorney General shall report to the Congress all the pertinent facts in the case. If, during the session of the Congress in which a case is reported, the Congress passes a concurrent resolution stating in substance that it approves the granting of the status of an alien lawfully admitted for permanent residence to such alien, the Attorney General is authorized, upon the payment of the required visa fee, which shall be deposited in the Treasury of the United States to the account of miscellaneous receipts, to record the alien's lawful admission for permanent residence as of the date of the passage of such concurrent resolution. * * * "

Statement of the Case

The facts disclose the unrelenting efforts of the Government to deport to Communist China a law-abiding Chinese alien who has lived in the United States without interruption since he entered lawfully in February 1939 as an eleven

year old member of the family of an accredited official of the Chinese Nationalist Government. The petitioner, now 31 years of age, has received practically his entire education in the United States including attendance at St. John's College beginning in 1943 (R. 41) and ending with a course in the Dance Department of New York University School of Education (R. 39) following which he became a professional dancer (R. 38). He is no security risk to the United States and yet he has been systematically denied the various types of discretionary relief Congress has provided for aliens stranded in the United States by political changes at home partly on the ground that the other members of his immediate family returned to China and principally on the ground of confidential information which, very instructively, proved to be of a most flimsy, and in part ludicrous, character when its substance, but not its source or the witnesses, was revealed following the first decision of the District Court in this case requiring such partial revelation (R. 3-9).

In 1946 the petitioner's father returned to Nationalist China on the orders of his government which employed him (R. 29) leaving his wife, a daughter and two sons, including petitioner, in the United States. On May 11, 1950 the Board of Immigration Appeals granted the mother and three children suspension of deportation and referred the cases to Congress pursuant to §19(c) of the Immigration Act of 1917, as amended (8 U. S. C. 155) under which they would have automatically received permanent residence unless Congress passed a concurrent resolution stating that it did not favor suspension of deportation. But in 1951, while awaiting the required period of Congressional consideration, petitioner's mother and sister returned home to the father in China and thereupon the Commissioner of Immigration and Naturalization withdrew the suspension case from Congress and reopened it, and pending its further consideration the petitioner's brother also returned to

China (App. 24). The petitioner, however, had refused to go back to China with his family and had also refused repeated subsequent requests by them to go back to China in view of "my residence and education in the United States since I was eleven years old and my strong attachments to and beliefs in traditions of the United States, I will be subject to persecution in China" (R. 42). On December 4, 1952, after a further hearing, petitioner's application for suspension of deportation, granted before his family returned to China without him, was finally denied and he was ordered deported (App. 25).

Thereupon, having been denied suspension of deportation, petitioner applied for the other discretionary relief provided by Congress in the form of a stay of deportation (§243(h) of the Immigration and Nationality Act) and for permanent residence under §6 of the Refugee Relief Act of 1953, *supra*, on the ground of his fear of persecution for his democratic political views if deported to Communist China. The stay of deportation was denied on the ground that he would not be subject to physical persecution in China and permanent residence under §6 of the 1953 Act was also denied on the ground that the petitioner could not comply with the statutory requirement that he be qualified for admission under the Immigration and Nationality Act in that he was excludable under §212(a)(27) (8 U. S. C. 1182).[1] The denial of both of these applications was based on confidential information not disclosed to the petitioner or his counsel.

The petitioner invoked the jurisdiction of the District Court under the Declaratory Judgment Act (28 U. S. C.

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[1] Section 212(a)(27) provides that the classes of aliens excluded from admission shall include "(27) Aliens who the consular officer or the Attorney General knows or has reason to believe seek to enter the United States solely, principally, or incidentally to engage in activities which would be prejudicial to the public interest, or endanger the welfare, safety, or security of the United States; • • • ."

2201) and the Administrative Procedure Act (5 U. S. C. 1001 ff.) by a petition seeking review of the legality of the denial of a stay of deportation under §243(h) of the 1952 Act and of permanent residence under §6 of the 1953 Act on the basis of confidential information. District Judge Noonan, on the authority of the second *Dolenz* decision in the court below (206 F. 2d 392; cf. 200 F. 2d 288, c. d. 345 U. S. 928), held that the use of confidential information to deny a stay of deportation was authorized by Congress (R. 6-7) by the language of §243(h) of the 1952 Act which delegated the question to be decided by the Attorney General in his "opinion." But, the court held, the different language of §6 of the 1953 Act indicated that "Congress must have intended that the alien should be informed of the nature of the information being used against him so that he might attempt to rebut it" (R. 7) and remanded the case to the Service for a further hearing on the application for relief under §6 of the 1953 Act consistent with the ruling that petitioner was entitled to know "the broad nature of the 'secret and confidential' information being used against him; * * *" (R. 9).

The Government did not appeal from Judge Noonan's decision and at the reopened hearing informed petitioner's counsel of the broad nature of the confidential information by stating six charges or categories of alleged adverse confidential information (R. 23-24). A request for the specific evidence upon which these charges were based and the names of the informants who made the charges was denied by the special inquiry officer who stated that he was "not permitted to disclose anything further, specifically as to the nature of the evidence" (R. 25-26). The petitioner answered fully and convincingly the six charges based on confidential information (R. 26-42) and in addition testified concerning the reason for his fear of persecution in Communist China (R. 42-45). The special inquiry officer

abandoned the prior ground for denial of relief under the 1953 Act, alleged inadmissibility under the catch-all language of §212(a)(27) quoted above, and in a brief decision, still relying on the confidential information completely refuted by petitioner, concluded that "Despite the applicant's categorical denial of the allegations contained in the confidential and secret information, the broad and general nature of which was disclosed to the applicant, it is concluded that he has failed to establish that he has reasonable grounds on which to fear persecution because of his political opinions should he return to China, and his application for adjustment of status should be denied on that ground" (R. 19).

On further review in the District Court (R. 12) Judge McGohey noted that the "broad nature and the purport of the secret and confidential information were disclosed by the examiner in six categories" and he was given an opportunity to meet this information (R. 13), and then held that the special inquiry officer was not obliged to accept the petitioner's explanations and that therefore it could not be determined judicially that the special inquiry officer had acted arbitrarily in concluding that the petitioner had failed to establish reasonable grounds for fear of persecution if returned to China (R. 15). The District Court relied for its decision upon *U. S. ex rel. Dolenz* v. *Shaughnessy*, 206 F. 2d 392, approving the use of confidential information upon denial of a stay of deportation under §243(h) of the 1953 Act and also upon *U. S. ex rel. Moon* v. *Shaughnessy*, 218 F. 2d 316 (C. A. 2), relying upon the *Dolenz* decision and emphasizing the limited nature of judicial review of decisions under §243(h) in a case apparently not involving confidential information.

Pending appeal from the District Court to the court below, and following the decision of this Court in *Jay* v. *Boyd*, 351 U. S. 345, the regulation permitting the use of

confidential information was amended, effective November 6, 1956, to provide that such information could not be used in the discretion of special inquiry officers unless "the Commissioner has determined that it is in the interests of national security and safety to do so" (8 C. F. R. 242.17(c)).[2] Following the issuance of the new regulation petitioner's counsel on November 13, 1956 wrote to the Solicitor General suggesting that in view of the new regulation and the difference between the language of §6 of the 1953 Act and the language of §244 of the 1952 Act (8 U. S. C. 1254) construed in *Jay* v. *Boyd*, *supra*, this appeal should not proceed but should be withdrawn by petitioner upon the grant of a further administrative hearing under the new regulation governing the use of confidential information. On December 26, 1956 the United States Attorney replied that it was the view of the Department of Justice that the case should not be considered further administratively but that the appeal should be defended.

The court below agreed with the petitioner that the special inquiry officer did rely upon the confidential information (App. 30) but held that "Congress apparently intended no different procedure in ascertaining these conditions [in China] for the purposes of a Section 6 application" than for an application under §243(h) of the 1952 Act upon which confidential information could be used, citing the second *Dolenz* decision.

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[2] The Commissioner announced in connection with the new regulation (New York Times, November 1, 1956):

> "Under the new regulation, hearing officers will not be permitted to consider or rely on information undisclosed to the alien unless the Commissioner has personally reviewed the case and has satisfied himself that every effort to develop evidence through Service investigation and investigation by other Governmental agencies has been exhausted, and that the information is of sufficient importance to the nation's safety or security as to require its submission to the hearing officer."

REASONS FOR GRANTING THE WRIT

I.

The 1953 Act does not authorize use of confidential information.

The court below plainly erred as a matter of law in applying its second *Dolenz* decision, 206 F. 2d 392, and holding that Congress in §6 of the 1953 Act intended to delegate the determination of an alien's "persecution or fear of persecution" to the Attorney General as completely as §243(h) of the 1952 Act was construed to have delegated the determination of a stay of deportation to any country which "in his [the Attorney General's] opinion the alien would be subject to physical persecution" with the result that under §6 as well as under §243(h) Congress authorized the use of confidential information in making the determination. This case presents an important undetermined question in the administration of the 1953 Act, and in the use of confidential information to deny relief authorized by Congress, which should be reviewed by this Court. Compare *Jay* v. *Boyd*, 351 U. S. 345. Various separate considerations make clear the error of the court below.[3]

1. *Text of §6 and §243(h).*—A comparison of the pertinent language of §243(h) and §6 discloses that the former is calculated to give the Attorney General the broadest discretion in forming his "opinion" on the question of

[3] The court below, deciding the merits, remarks in passing that petitioner "did not mention any alleged unlawful or unconstitutional receipt of evidence" (App. 29). This statement is contrary to the record because the petition seeking judicial review expressly states that there was a denial of due process in that the decision was "based on confidential and secret information not disclosed to the petitioner" (second amended petition verified July 20, 1955 and filed July 21, 1955 (App. 28, 34)). The motion of June 4, 1956 in the then pending judicial proceeding alleged that the last admin-

physical persecution, but the latter provides that the alien "establish" merely his fear of persecution and delegates no special discretion to the Attorney General.

§243(h) of the 1952 Act

"(h) The Attorney General is authorized to withhold deportation of any alien within the United States to any country in which in his opinion the alien would be subject to physical persecution and for such period of time which he deems to be necessary for such reason."

§6 of the 1953 Act

"Sec. 6. Any alien who establishes that prior to July 1, 1953 he lawfully entered the United States as a bona fide non-immigrant and that because of events which have occurred subsequent to his entry into the United States he is unable to return to the country of his birth, or nationality, or last residence, because of persecution or fear of persecution on account of race, religion, or political opinion, may, within one year after the effective date of this Act apply to the Attorney General of the United States for an adjustment of his immigration status."

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istrative decision was "based upon no evidence of record" (App. 36) which could only have meant, and it was understood to mean, that it was based on the confidential information not of record. The petitioner's further cross-motion of August 13, 1956, in answer to respondent's cross-motion for summary judgment of July 17, 1956, states that "the special inquiry officer has apparently used information which does not appear of record" (App. 38). The last administrative hearing was devoted largely to petitioner's refutation of the summary of the confidential information. Petitioner's counsel asked for the evidence and the witnesses providing the confidential information and objected to the use of confidential information (R. 25). The special inquiry officer did not deny reliance on the confidential information (R. 17-19). Judge McGohey in his opinion did not state that the confidential information was not involved and his reliance upon the second *Dolenz* decision of the court below, involving the use of confidential information, indicates that he thought it was involved in this case. On this record it cannot fairly be asserted that confidential information was not the basis of the administrative decision and of the decisions of the courts below or that petitioner's counsel did not object to the use of confidential information throughout the case. Finally, any possible question in the matter is disposed of by the decision of the court below on the merits holding that confidential information was lawfully used.

Section 243(h) was deliberately changed to the present language merely requiring the Attorney General's "opinion" from the prior language (8 U. S. C. 156) which had prohibited deportation to a country in which the Attorney General "shall find" that the alien would be subject to physical persecution. *U. S. ex rel. Dolenz* v. *Shaughnessy*, 206 F. 2d 392 (C. A. 2). But §6 of the 1953 Act, although enacted after Congress made the change in §243(h) of the 1952 Act, adhered to the language used in the predecessor §4(b) of the Displaced Persons Act of 1948 (50 U. S. C. App. 1953). The deliberate adherence in the 1953 Act to the language of the 1948 Act, requiring the alien to "establish" merely his *fear* of persecution (rather than to satisfy the Attorney General's opinion of the *fact* of prospective *physical* persecution), and requiring the Attorney General to report to Congress all the pertinent facts in the case if he shall "determine" that (a) the alien was of good moral character, (b) physically present in the United States at the requisite time, and (c) admissible to the United States under the 1952 Act, makes it plain that Congress reserved to itself the determination whether persecution or fear of persecution had been satisfactorily established and delegated no special or extraordinary discretion on this issue to the Attorney General. *Cheng Fu Shen* v. *Barber*, 144 F. Supp. 913, 916 (N. D. Cal.); *D'Antonia* v. *Shaughnessy*, 139 F. Supp. 719, 723 (S. D. N. Y.).[4]

In the absence of express statutory authority to use confidential information (as in §235(c) of the 1952 Act,

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[4] When used in relation to administrative proceedings words such as "establish" and "determine," unlike words such as "opinion" or "discretion," indicate a legislative intention to require an adjudication based on substantial evidence. *Gooch Milling Co.* v. *Commissioner*, 133 F. 2d 131, 137 (C. A. 8); *Cole* v. *Saranac Lake General Hospital*, 282 App. Div. 626, 125 N. Y. S. 2d 891 (3rd Dept.).

8 U. S. C. 1225(c)), or language plainly delegating the decision entirely to the Attorney General's discretion or opinion (*Jay* v. *Boyd, supra*), the 1953 Act should not be construed as intending a departure from customary administrative hearing procedure in which the use of confidential information would be barred. Congress contemplated an administrative hearing at which the alien would have an opportunity to "establish" his eligibility on the issue of fear of persecution and the Attorney General would make a "determination" of the facts on the particular issues delegated to him for decision. The necessary implication from the statutory provision contemplating a hearing is that confidential information could not be used because a "hearing" followed by a decision based upon undisclosed confidential information is no hearing at all. *Parker* v. *Lester*, 227 F. 2d 708 (C. A. 9); *Boudin* v. *Dulles*, 136 F. Supp. 218, aff'd 235 F. 2d 532 (C. A. D. C.); *Mazza* v. *Cavicchia*, 15 N. J. 496, 101 A. 2d 545.[5]

2. *Regulations.*—The published regulations, which have the force and effect of law (8 U. S. C. 1103; *U. S. ex rel. Accardi* v. *Shaughnessy*, 347 U. S. 260, 265), in respect of adjustment of status under the 1953 Act (8 C. F. R. Part 245a) provide in part that the immigration officer who hears the case shall prepare a memorandum of his findings as to each of the essential facts and transmit the record to the regional commissioner who shall approve or disapprove

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[5] Chief Justice Arthur T. Vanderbilt stated:

"In any proceeding that is judicial in nature, whether in a court or in an administrative agency, the process of decision must be governed by the basic principle of the exclusiveness of the record. 'Where a hearing is prescribed by statute, nothing must be taken into account by the administrative tribunal in arriving at its determination that has not been introduced in some manner into the record of the hearing.' • • • [U]nless this principle is observed, the right to a hearing itself becomes meaningless."

the immigration officer's recommendation (8 C. F. R. 245a.11). If a denial is recommended a copy of the memorandum shall be furnished to the applicant or his attorney pursuant to §§292.11 and 292.12. Section 292.11(b) provides that whenever an examination is provided for by the regulations the person involved shall have the right to be represented at the examination by an attorney who shall be permitted to examine or cross-examine witnesses and to introduce evidence. It is submitted that these regulations providing for cross-examination, which was denied in this case by refusal to produce the informants who had supplied the confidential information, and the absence of any express regulation authorizing the use of confidential information in these proceedings, imply that the use of confidential information in these proceedings under §6 of the 1953 Act is not authorized.[6]

3. *Rule of construction.*—This Court has repeatedly stated that an immigration statute, in the absence of plain language requiring it, will not be construed as authorizing an exercise of authority which raises serious constitutional questions. *United States* v. *Witkovich*, 353 U. S. 194, 202; *Chew* v. *Colding*, 344 U. S. 590; *Sung* v. *McGrath*, 339 U. S. 33. The petitioner submits that §6, construed to grant authority to deny him a permanent residence on the basis of confidential information even though he has resided uninterruptedly in the United States since 1939, denies him due process of law under the Fifth Amendment of the Constitution to which he is entitled as a person residing in the United States.

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[6] The regulation (8 C. F. R. 242.17(c)) permitting the use of confidential information in determining applications for discretionary relief from deportation is not in terms applicable to a separate proceeding under §6 of the 1953 Act which is not technically an application for relief from deportation under the 1952 Act.

II.

The use of confidential information violated the Administrative Procedure Act.

The court below in its opinion did not rule expressly on the petitioner's contention below that §§5, 7, 8 and 10 of the Administrative Procedure Act of 1946 (5 U. S. C. 1004 ff.) apply to hearings under §6 of the 1953 Act and forbid the use of confidential information. The absence in the 1953 Act of an express provision, similar to the provision of §242(b) of the 1952 Act (8 U. S. C. 1252) prescribing exclusive procedure for determining deportability, leaves applicable §§5, 7 and 8 of the 1946 Act to administrative hearings to determine eligibility for permanent residence under §6 of the 1953 Act. Section 12 of the 1946 Act (5 U. S. C. 1011);[7] *Fong Sen* v. *Immigration and Naturalization Service*, 137 F. Supp. 236 (E. D. La.), aff'd 234 F. 2d 656 (C. A. 5); cf. *Marcello* v. *Bonds*, 349 U. S. 302.

Section 7(c) of the 1946 Act (5 U. S. C. 1006) expressly provides that every party shall have the right "to conduct such cross-examinations as may be required for a full and true disclosure of the facts." Section 7(d) provides in part that the testimony and exhibits, together with other papers filed in the proceeding, shall constitute the "exclusive record" for decision in accordance with §8 of the Act. Section 10(e) (5 U. S. C. 1009) provides that agency action may be set aside if unsupported by substantial evidence in any case subject to §§7 and 8 of the Act.

The petitioner submits that the use of confidential information violated the provisions of the Administrative

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[7] "Sec. 12 • • • No subsequent legislation shall be held to supersede or modify the provisions of this Act except to the extent that such legislation shall do so expressly. • • • "

Procedure Act and presents an important question and also presents a conflict with the Fifth Circuit which should be reviewed and resolved.

III.

Denial of due process of law by use of confidential information.

The petitioner urges that the use of confidential information, if authorized by Congress, denied him the due process of law to which he is entitled as a resident of the United States. *Chew* v. *Colding, supra; Sung* v. *McGrath, supra; Bridges* v. *Wixon*, 236 U. S. 135; *The Japanese Immigrant Case*, 189 U. S. 86. Section 235(c) of the 1952 Act, permitting the exclusion of an alien applying for admission on the basis of confidential information, the disclosure of which the Attorney General in his discretion and after consultation with appropriate security agencies concludes would be prejudicial to the public interest, goes to the verge of the constitutional power of Congress. *Shaughnessy* v. *U. S. ex rel. Mezei*, 345 U. S. 206; *U. S. ex rel. Knauff* v. *McGrath*, 338 U. S. 537. The petitioner having entered the United States lawfully in 1939 and having lived here uninterruptedly since that time cannot be relegated to the position of an alien seeking to enter and lacking constitutional rights and be denied a permanent residence under §6 of the 1953 Act and deported to Communist China under the 1952 Act without a due process hearing. *Chew* v. *Colding, supra.* The use of confidential information denied him a fair hearing and due process of law.

IV.

Denial of due process by an arbitrary decision.

Even if revelation of the alleged substance of the confidential information validated its use, or even if (contrary to the decision below) it had not been used, nevertheless the adverse administrative decision denied petitioner due process of law because it was completely contrary to all the evidence and wholly arbitrary. The indisputable facts that petitioner, educated in the United States and professing attachment to our institutions, had repeatedly refused to rejoin his family in China, supported the conclusion that he reasonably and honestly feared political persecution if returned to China. Significantly the denial of relief was not based, as the regulations required, on findings "as to each of the essential facts prescribed by section 6" (8 C. F. R. 245a.11) but merely upon a general conclusion that petitioner failed to establish reasonable grounds of fear of persecution (R. 19).

The petitioner submits that the whole record indicates that the administrative decision was actually not a determination on the facts but merely an expression of a policy decision of the Service that petitioner, against whom confidential information had been lodged, and which he clearly refuted, and whose family had chosen to return to China, should be denied all discretionary relief including suspension of deportation, stay of deportation and finally, permanent residence under §6. This view that petitioner is the victim of a policy decision to get rid of him on any ground is supported by the fact that the Service first held that the confidential information made him inadmissible as an alien seeking to enter the United States to engage in activities prejudicial to the public interest (§212(a)(27)), but when required to reveal the confiden-

tial information and support that charge, the Service abandoned this ground and retreated to the safer position that petitioner was unable to "satisfy" the special inquiry officer that he feared persecution.

The fact that this was a mere policy decision and not an administrative decision on the record is also supported by the consideration that other Chinese aliens similarly situated, except for return of petitioner's family to China and the use of confidential information against him, have been granted permanent residence under §6 upon their testimony concerning their opposition to Communism and fear of persecution in China. *Matter of T.-C.*, Interim Decision No. 212, decided November 7, 1950 (reported in Immigration and Naturalization Service "Monthly Review," December 1950, pp. 95-98);[8] cf. Lowenstein, *The Alien and the Immigration Law* (1958), pp. 130-137. It is also significant, as bearing on the question whether petitioner obtained a decision on the merits of his application, that the Commissioner ruled generally that in the absence of "positive affirmative proof that he [the alien] would be welcomed by the authorities in Communist China because of his express and implied sympathy for or cooperation with the present regime" deportation should be stayed pending a study of treatment of persons deported to China. *In re Lee Sung*, A 7921505, dated June 14, 1957,

[8] This decision states in part:

"FEAR TO RETURN: The applicant's testimony above related to displacement based upon his fear of persecution will be utilized to establish that other cardinal eligibility requisite, namely, that the applicant is unable to return to the country of his birth, nationality, or last residence because of persecution or fear of persecution on account of his race, religion, or political opinions. His testimony with respect to his opposition to Communism, and the acknowledgment that China is at this time a Communist-dominated country establishes that the applicant is unable to return to China because of his fear of persecution on account of his political opinions."

extending former decision of October 31, 1956, conveniently set forth in *The Alien and the Immigration Law, supra,* p. 283.[9]

The insubstantial nature of the confidential information also discloses that it could not be made the basis of a reasonable decision that petitioner did not fear persecution if returned to China. The First Charge in the confidential information to the effect that petitioner had a close relationship with his half-brother and father, was

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[9] This decision followed the comments in the Report on the Administration of the Immigration and Nationality Act, dated February 28, 1955, for the House Committee on the Judiciary, which in respect of stay of deportation under §243(h) of the 1952 Act stated in part (pp. 69-70):

> "Similarly, few officers of the Service now vested with discretionary powers to make decisions under section 243(h) are possessed of sufficient knowledge of the past, recent, and current history of the many countries of Europe and Asia where physical persecution for political reasons is a matter of everyday practice. Not many of them know how Soviet terrorism operates behind the Iron Curtain and whom and why it singles out for destruction. In many cases brought to the attention of the task force by sources preferring to remain anonymous, apparently well justified claims of fear of persecution in at least three countries now dominated by international communism have been flatly rejected without the presentation of anything even remotely resembling a factual rebuttal of the claims made by the deportee.
>
> *It is respectfully suggested that the committee may deem it necessary to take up the matter of administration of section 243(h) directly with the Secretary of State and the Attorney General, with a view toward developing a definite policy to guide those who may pass on applications to 'withhold deportation.' It is further submitted that the above recommendation appears to be urgent not only from the point of view of humanitarian aspects of the problem, but also for considerations involving broader foreign policy of the United States and this country's position of leadership among free nations* (italics in original).
>
> The fact that the exercise of discretionary power under section 243(h) appears to be unreviewable in courts (see *U. S. ex rel. Dolenz* v. *Shaughnessy, supra*) probably contributes to the urgency of the above recommendation."

convincingly refuted by petitioner's testimony that he had not seen his half-brother since the Bretton Woods Conference in 1944 (R. 27-28) or his father since his return to China in 1946 (R. 29, 32).

On the Second Charge, petitioner's former testimony that he had been favorably impressed with early activities of the Chinese Communists, he explained that he was influenced by the proposed land reforms of the Communists and the reported corruption of the Nationalist Government (R. 34-36). These views were constantly expressed in our press and widely held. He testified to his disillusionment and recognition that Communism had brought a repugnant terrorism and regimentation to China (R. 36). The petitioner denied (Third Charge) connection with the Chinese Christian Students Association or support of communism as better than capitalism (R. 36-37); admitted (Fourth Charge) dancing professionally for a fee at the Peoples' Drama Theatre but denied knowledge of the alleged political motives of the sponsors (R. 39). On the Fifth Charge of reported close association with an alleged Communist, petitioner explained that they were roommates for a time because of mutual interest in professional dancing but did not share political interests (R. 39-41). The petitioner admitted membership in the American Youth for Democracy (Sixth and last Charge) for a short time in 1943 while attending St. John's College and explained that at the time the chapter was devoted to the common war effort (R. 42).

On the issue of fear of persecution petitioner gave sworn testimony that he did not agree with Communism in principle; that for refusal to work as an entertainer for the Chinese Communist Government he might be made an example and imprisoned (R. 43); that he would be regarded with great suspicion in Communist China for his repeated

refusals to return there voluntarily and because of his education in the United States and attachment to our traditions (R. 42-43). He testified that he had never been actively in favor of communism and has been against communism and is actually afraid of persecution if returned to China (R. 45).

This Court has repeatedly stated that an administrative decision under the immigration laws which is not supported by the evidence is arbitrary and capricious and denies an alien residing in the United States due process of law. *Lloyd Sabaudo* v. *Elting,* 287 U. S. 329, 335, 336; *U. S. ex rel. Vajtaur* v. *Commissioner,* 273 U. S. 103, 106; cf. §242(b) (8 U. S. C. 1252(b)). The petitioner submits that the record discloses that he was denied a favorable administrative decision and reference of his case to Congress for consideration of grant of permanent residence under §6 of the 1953 Act although all the evidence required the conclusion that he had established fear of persecution if deported to China. The denial of his application actually was based upon the fact that refuted confidential information had been lodged against him and that members of his family had chosen to return to China, and a denial on this basis was arbitrary and capricious and denied him due process of law.

CONCLUSION

For the foregoing reasons it is respectfully submitted that this petition for a writ of certiorari should be granted.

EDWARD J. ENNIS
BENJAMIN GIM
Attorneys for Petitioner
165 Broadway
New York 6, N. Y.

CLIFFORD FORSTER
of Counsel

February 10, 1958.

APPENDIX

Opinion of the Court of Appeals

* * * * *

Before:

CLARK, *Chief Judge*,
MOORE, *Circuit Judge* and LEIBELL, *District Judge*.

* * * * *

* * * * *

LEIBELL, *District Judge*:

Petitioner is a native and citizen of China. He entered the United States on February 3, 1939, under Section 3(1) of the Immigration Act of 1924, as a member of the family of a Chinese government official associated with the Consul General in New York. The petitioner's status was dependent upon the continuance of his father's status. Petitioner's father terminated his work here and returned to China in 1946. Petitioner, his mother, a brother and a sister remained here and were subjected to deportation proceedings.

In connection with the deportation proceedings petitioner and members of his family applied for suspension of deportation under the provisions of Section 19(c)(2)(b) of the Immigration Act of 1917, as amended July 1, 1948 (62 Stat. 1206).[1] By an order dated May 11, 1950 the

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[1] "(c) In the case of any alien (other than one to whom subsection (d) is applicable) who is deportable under any law of the United States and who has proved good moral character for the preceding five years, the Attorney General may * * *; (2) suspend deportation of such alien if he is not ineligible for naturalization or if ineligible, such ineligibility is solely by reason of his race, if he finds * * *; (b) that such alien has resided continuously in the United States for seven years or more and is residing in the United States upon the effective

Board of Immigration Appeals granted the application of all four persons for suspension of deportation and on June 1, 1950 their cases were referred to Congress, in accordance with the provisions of the Act.

On December 27, 1950, the Commissioner moved before the Board of Immigration Appeals requesting that the outstanding order of the Board dated May 11, 1950, granting the petitioner and three others suspension of deportation be rescinded; that steps be taken to withdraw the cases from Congress; and that the proceedings be reopened for further consideration. In support of its motion the Commissioner stated that a communication had been received from the local immigration office stating that petitioner's mother and his sister had returned to China; and that a further investigation was desired before the immigration status of the remaining members of the family, petitioner and his brother, was legalized. By an order dated January 31, 1951, the Board of Immigration Appeals granted the motion of the Commissioner; rescinded their prior order of May 11, 1950, and ordered that the proceedings in the cases of petitioner and his brother "be reopened for such further consideration as may be appropriate." Subsequently petitioner's brother also returned to China.

On July 26, 1951, petitioner was granted a hearing before an Immigration Special Inquiry Officer in New York, in order to afford petitioner an opportunity to show why he should not be deported from the United States. There

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date of this Act. If the deportation of any alien is suspended under the provisions of this subsection for more than six months, a complete and detailed statement of the facts and pertinent provisions of law in the case shall be reported to the Congress with the reasons for such suspension." [Subsection (d) is inapplicable to the alien petitioner in this case.]

was considerable delay, but finally on December 4, 1952, the hearing officer rendered a decision denying the applica-

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tion of petitioner, and he ordered that petitioner "be deported from the United States pursuant to law on the charge stated in the warrant of arrest," dated June 7, 1949, his failure to maintain an exempt status.

A warrant ordering that petitioner be deported to China at the expense of the United States government was issued on December 4, 1952. Petitioner received a number of postponements and finally on November 17, 1954, he executed an affidavit which he served upon the immigration authorities in the deportation proceeding. The affidavit recited that he had been ordered to surrender into the custody of the Immigration and Naturalization Service for deportation to China via Hong Kong on November 22, 1954, pursuant to formal demand dated October 22, 1954; that he wished a stay of execution of the order of December 4, 1952, under Section 1253(h) of Title 8 U. S. C. A. on the ground that the mainland of China is under the control of a communistic government, and that if he were deported to China he would be subjected to physical persecution. The affidavit also stated that petitioner was "concurreatly submitting an application for adjustment of [his] status under Section 6 of the Refugee Relief Act of 1953" [50 U. S. C. App. §1971d];[2] and he requested

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[2] "Any alien who establishes that prior to July 1, 1953, he lawfully entered the United States as a bona fide nonimmigrant and that he is unable to return to the country of his birth, or nationality, or last residence because of persecution or fear of persecution on account of race, religion, or political opinion, * * * may, not later than June 30, 1955, apply to the Attorney General of the United States for an adjustment of his immigration status. If the Attorney General shall, upon consideration of all the facts and circumstances of the case, determine that such alien has been of good moral character for the preceding five years and that the alien was physically

that the proceedings which led to the order of petitioner's deportation be reopened and reconsidered. On November 23, 1954, petitioner filed an "Application to Adjust Immigration Status under Section 6 of the Refugee Relief Act of 1953."

On May 5, 1955, petitioner was given a hearing before a Special Inquiry Officer, on his application seeking adjustment of his immigration status under Section 6 of the Refugee Relief Act of 1953. On May 10, 1955, the Special Inquiry Officer recommended that petitioner's "application for adjustment of immigration status under the provisions of Section 6 of the Refugee Relief Act of 1953, be denied for the reason that he is not presently qualified for admission into the United States under the provisions of the Immigration and Nationality Act," holding in part that on "the basis of confidential and secret information of a nature which prohibits its disclosure to the applicant however, it is concluded that were the applicant at this time seeking admission to the United States, he would be inadmissible to this country under the provisions of Section 212(a)(27) of the Immigration and Nationality Act of 1952" [T. 8 U. S. C. §1182(a)(27)].[3] On June 16, 1955

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present in the United States on the date of the enactment of this Act [August 7, 1953] and is otherwise qualified under all other provisions of the Immigration and Nationality Act [chapter 12 of Title 8] except that the quota to which he is chargeable is oversubscribed, the Attorney General shall report to the Congress all the pertinent facts in the case."

[3] §1182 Excludable classes of aliens; non-applicability to certain aliens; waiver of requirements; parole of aliens; report to Congress; suspension of entry by President

(a) Except as otherwise provided in this chapter, the following classes of aliens shall be ineligible to receive visas and shall be excluded from admission into the United States:

• • • • •

(27) Aliens who the consular officer or the Attorney General knows or has reason to believe seek to enter the United

the recommendation was approved by the Acting Regional Commissioner.

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On May 26, 1955, petitioner was given a hearing before a Special Inquiry Officer on his application for relief under Section 1253(h) of Title 8 U. S. C. A.[4] On May 31, 1955, the Special Inquiry Officer recommended that petitioner's application be denied and "that the deportation of the applicant alien to China be not withheld on the ground that the alien would be subject to physical persecution therein." The recommendation was based in part also upon "confidential and secret information" not disclosed to the petitioner. The recommendation was approved by the Acting Regional Commissioner on June 15, 1955. On June 21, 1955, the District Director wrote petitioner and made a formal demand upon him to surrender to the Deportation Control Officer on July 6, 1955, for deportation to China. Then followed proceedings in the United States District Court for the Southern District of New York, in an action for a declaratory judgment under the Administrative Procedure Act.[5]

On July 1, 1955, petitioner's attorney obtained an order to show cause on a motion for an order of the court staying the execution of the order of deportation against the

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States solely, principally, or incidentally to engage in activities which would be prejudicial to the public interest, or endanger the welfare, safety, or security of the United States;

[4] [§1253]

(h) The Attorney General is authorized to withhold deportation of any alien within the United States to any country in which in his opinion the alien would be subject to physical persecution and for such period of time as he deems to be necessary for such reason. June 27, 1952, c. 477, Title II, ch. 5, §243, 66 Stat. 212.

[5] T. 5 U. S. C. §1009(b); *Shaughnessy* v. *Pedreiro*, 349 U. S. 48.

petitioner, pending a hearing and determination of petitioner's court petition filed June 30, 1955, requesting a review of the orders and decisions of the Hearing Officer and Regional Commissioner. The Court Clerk's docket entries disclose that petitioner's attorney on July 12, 1955, filed an amended petition and that on July 21, 1955, he filed a further amended petition. On August 25, 1955, the respondent filed a cross-motion to dismiss the petition on

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its merits. Both petitioner's motion and respondent's cross-motion came on for a hearing before Judge Noonan on September 6, 1955.

From the foregoing it appears that when the court proceedings were instituted petitioner had applied to the Immigration authorities for adjustment of status under 50 U. S. C. App. 1971d (the Refugee Relief Act of 1953, §6) and for a stay of deportation under 8 U. S. C. §1253(h); and that these applications had been denied by the Immigration authorities on the grounds that secret and confidential information established that petitioner was ineligible for such adjustment of status because he was not otherwise qualified under the nonquota provisions of the Immigration and Nationality Act, namely 8 U. S. C. §1182(a)(27) and that the applicant's deportation should not be withheld because he would not be subject to physical persecution in China.

On review Judge Noonan remanded the Section 6 proceeding for further hearing. In his view deportation of petitioner, a resident alien, pursuant to 8 U. S. C. §1182(a)(27) on secret information would be unconstitutional as a deprivation of procedural due process, and therefore Congress must have intended a full-fledged hearing by the Attorney General under the Refugee Relief Act of 1953 to determine an alien's eligibility under the nonquota provi-

sions of the Immigration and Nationality Act. Further, such intent is obvious from Congress' use of the clause "the Attorney General shall, upon consideration of all the facts and circumstances, determine." That clause requires a hearing at which the alien has the opportunity to rebut unfavorable evidence; so the government must divulge the broad outlines of the confidential information in order that petitioner may rebut it, if possible.

On the further administrative hearing following the remand the government divulged the "categories" of secret

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information and petitioner testified in rebuttal. This time, instead of denying petitioner's application on the grounds that he was ineligible under the nonquota provisions, the immigration authorities said that he had failed to establish that he was unable to return to Red China because of fear of persecution. Petitioner claims that this decision was arbitrary and capricious and that the use of confidential information in arriving at it was unlawful and unconstitutional.

Petitioner sought a court review of that decision in an action under the Declaratory Judgment Act, T. 28 U. S. C. §2201 instituted in the District Court on the filing of a "petition" (not a "complaint") on June 30, 1955. He contended before Judge McGohey that such determination was against the evidence and against the weight of the evidence. He did not mention any alleged unlawful or unconstitutional receipt of evidence. Judge McGohey ruled against petitioner, denied the motion to review and granted the government's motion for summary judgment, and entered an order to that effect.

Under 8 U. S. C. §1253(h), the Attorney General is authorized to withhold deportation of an alien to any country in which, in his opinion, the alien would be subject to

physical persecution. We held that the Commissioner, in denying an application under this section, could resort to confidential information outside the record without denying a resident alien procedural due process. *U. S. ex rel. Dolenz* v. *Shaughnessy*, 2 Cir., 206 F. 2d 392. The Commissioner's decision under the Refugee Relief Act, §6, whether or not the alien has established that he is unable to return to the country of his birth because of fear of persecution is the same kind of decision, i.e., it depends not only upon the petitioner's background, but on conditions in the country of his birth. Congress apparently intended no different procedure in ascertaining these conditions for

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the purposes of a Section 6 application. Further, here the Commissioner did inform petitioner of the confidential information on which the decision in part was based. Although petitioner was not informed of the source of this information, he was given the opportunity to rebut it. The information (which the petitioner admitted and explained) can be interpreted to show that he will not be persecuted upon his return to Red China. The Commissioner's conclusion is thus far from arbitrary or capricious.

Petitioner also argues that the language of Section 6 indicates that Congress intended a full-fledged hearing on Section 6 applications—unlike the hearing intended on applications under 8 U. S. C. §1253(h). This was the basis for Judge Noonan's decision. But here we are concerned with that part of Section 6 which says that after the alien establishes that he is unable to return to his country because of fear of persecution he may apply to the Attorney General for adjustment of status. The portion of the statute with which Judge Noonan was concerned says that the Attorney General will then determine on all the facts and circumstances that petitioner is otherwise eligible under the nonquota provisions of the Immigration and

Nationality Act. We cannot read into the word "establish" the type of hearing which petitioner claims is intended (i.e., that the informants who were the source of the confidential information should be produced for cross-examination by the alien), particularly because of the "political" type of decision required of the Commissioner regarding fear of persecution.

The order of the District Court, dated November 17, 1956, is affirmed.

Second Amended Petition

The petitioner, Cha'o Li Chi, also known as Cha'o Pieh Chi, for his amended petition herein by his attorney, Stanley Law Sabel, respectfully alleges and shows to this Court as follows:

1. That this action for a declaratory judgment under the Declaratory Judgment Act (28 U. S. C. 2201) and for review under the Administrative Procedure Act (5 U. S. C. 1001, et seq.) relates to proceedings arising under the Immigration and Nationality Act and the Refugee Relief Act of 1953; jurisdiction is vested in this Court pursuant to the Declaratory Judgment Act, the Immigration and Nationality Act, and Section 10 of the Administrative Act.

2. That respondent is the duly appointed and Acting District Director of Immigration for the New York District. This action involves, in part, the constitutionality of a statute of the United States and requires adjudication thereon by a three-judge court.

3. That petitioner is a resident alien, having resided in the United States since February 3, 1939, when he was admitted to the United States under Section 3(1) of the Immigration Act of 1924; and petitioner is now 28 years

of age and has resided in the United States since entering it at the age of 11 years.

4. That under date of October 22, 1954, demand was made upon petitioner to surrender into the custody of the Immigration and Naturalization Service for deportation on November 22, 1954.

5. That on November 18, 1954, application was made on petitioner's behalf pursuant to Section 243(h) of the Immigration and Nationality Act for a stay of deportation on the grounds that petitioner would be subject to physical persecution if he were deported to China.

6. That on May 26, 1955, a hearing was held under Section 243(h) before Special Inquiry Officer Ira Fieldsteel, who rendered his decision and his recommendation as follows:

> "RECOMMENDATION: It is recommended that deportation of the applicant alien to China be not withheld on the ground that the alien would be subject to physical persecution therein, and
>
> IT IS FURTHER RECOMMENDED that the record herein be forwarded to the Regional Commissioner, Northeast Region, for review."

7. That on or about November 24, 1954, an application was filed on behalf of petitioner to adjust his immigration status under Section 6 of the Refugee Relief Act of 1943.

8. That on or about the 5th day of May, 1955, examination of petitioner was held before Special Inquiry Officer Lennox P. Kanzler, of petitioner's application under Section 6 of the Refugee Relief Act, who rendered his decision on May 10, 1955, with the following recommendation:

"RECOMMENDATION: It is recommended that the alien's application for adjustment of immigration status under the provisions of Section 6 of the Refugee Relief Act of 1953, be denied for the reason that he is not presently qualified for admission into the United States under the provisions of the Immigration and Nationality Act."

9. In the findings of the Special Inquiry Officer Kanzler, under Section 6 of the Refugee Relief Act, he found as follows:

"On the basis of confidential and secret information of a nature which prohibits its disclosure to the applicant, however, it is concluded that were the applicant at this time seeking admission to the United States he would be inadmissible to this country under the provisions of Section 212(a)(27) of the Immigration and Nationality Act. Section 6 of the Refugee Relief Act requires among other things that the applicant be otherwise qualified under all other provisions of the Immigration and Nationality Act except that the quota to which he is chargeable be oversubscribed. This applicant, in view of the foregoing, is not otherwise admissible to the United States and accordingly will be denied on that ground."

10. That the petitioner herein filed timely objections to the recommendations and findings of the Special Inquiry Officers and briefs were submitted on behalf of the petitioner to the Regional Director at Burlington, Vermont.

11. That on June 15, 1955, the Acting Regional Commissioner adopted the findings of the Inquiry Officer on the application under Section 243(h) as follows:

"It is ordered that the deportation of the alien to China be not withheld on the ground that the alien would be subject to physical persecution."

12. That on June 16, 1955, the Acting Regional Commissioner adopted the findings of the Special Inquiry Officer under the proceedings under Section 6 of the Refugee Relief Act approving the denial of the application.

13. That by virtue of said orders and decision of the Acting Regional Commissioner the said order of deportation becomes final and petitioner herein has exhausted his administrative remedies.

14. That there has been a denial of due process of law in the following respects.

(a) Petitioner's application under Section 6 of the Refugee Relief Act was denied arbitrarily and without sufficient evidence.

(b) The decision in said Section 6 proceeding was predetermined and not based on evidence presented at the hearing.

(c) The decision in both proceedings based on confidential and secret information not disclosed to the petitioner

(i) deprived petitioner of the opportunity of refuting the "evidence",

(ii) resulted in findings unsupported by evidence; and

(iii) deprived petitioner of an opportunity for effective judicial review.

(d) The proceedings were conducted without procedural due process.

(e) Petitioner has been deprived of a full and fair hearing.

(f) The Hearing Officers rendered arbitrary decisions and failed to make reasoned determination of the issues involved.

(g) The Hearing Officers were not qualified to pass upon the application.

15. Section 212(a)(27) of the Immigration and Nationality Act as interpreted and applied by the Special Inquiry Officer in said Section 6 proceeding is unconstitutional and void as depriving the petitioner of due process of law in violation of the Fifth Amendment to the United States Constitution.

16. That petitioner is without any speedy or adequate remedy at law.

17. That there exists between petitioner and the defendant a controversy in that petitioner maintains that the acts and threatened acts herein complained of are illegal and void for the reasons hereinabove set forth, while the defendant maintains on the other hand that the said acts are lawful in all respects.

WHEREFORE, petitioner prays that this Court (1) review the orders of the Hearing Officers and Regional Commissioner; (2) issue a temporary injunction staying the execution of the aforesaid order of deportation pending final determination of the issues in this action by this Court; (3) declare the orders of the Hearing Officers, as adopted by the Regional Director, to be null and void; (4) issue a temporary and permanent injunction restraining the enforcement, operation and execution of Section 212(a)(27) of the Immigration and Nationality Act against peti-

tioner for repugnance to the Constitution of the United States; and (5) Grant such other and further relief as may be just and proper.

STANLEY LAW SABEL

(Verified July 20, 1955 and filed July 21, 1955.)

Petitioner's Motion for Review of June 4, 1956

The petitioner above named, by his attorney, Marvin M. Neuman, Esq., submits the within Motion to Review an Administrative Decision, upon the following bases of facts:

1. This is an action for a declaratory judgment, under the Declaratory Judgment Act (2 U. S. C. 2201), and for review under the Administrative Procedure Act (5 U. S. C. 1001, et seq.), and under the Immigration and Nationality Act (8 U. S. C., 1 et seq.).

2. On September 30, 1955, the Hon. Gregory F. Noonan, Judge, United States District Court, Southern District of New York, published the Opinion in this matter, followed by Order, signed on December 2, 1955.

3. Pursuant to said Opinion and Order, the Defendant-Respondent conducted an examination of the Plaintiff-Petitioner, said examination having taken place on March 27, 1956.

4. On April 10, 1956, the appropriate Hearing Officer of the Defendant-Respondent prepared a recommendation denying the alien's application for adjustment of status.

5. On May 17, 1956, the Regional Commissioner ordered that the application be denied. Attached hereto and made a part hereof is the final administrative order entered in this matter.

6. It is submitted that the final administrative determination is against the evidence and is against the weight of the evidence.

7. It is submitted that the recommendation of denial is based upon a conclusion reached by the Defendant-Respondent, which conclusion is based upon no evidence of record.

8. It is submitted that the alien has established beyond question a reasonable and legitimate fear of persecution, if returned to his native country, and that the conclusion reached by the administrative officers that he has failed to establish reasonable grounds on which to fear persecution is an arbitrary and capricious determination.

WHEREFORE, the Petitioner prays for a judicial review of the aforesaid determination, and for such other relief that to the Court may seem proper.

Respectfully submitted,

MARVIN M. NEUMAN
1776 Broadway
New York 19, New York

Dated: New York, New York
June 4, 1956.

Petitioner's "Brief sur Petition and Review and Contra Cross Motion" of August 13, 1956

* * * * *

At the time that the applicant was re-examined, the Special Inquiry Officer was specifically asked to hear the matter de novo. The reason for the request was that this Court had declared the previous decisions of the defendant to be null and void. It is believed that if the decisions are null and void, the evidence or allegations upon which those decisions rested, would necessarily have to be re-examined and reconsidered. However, in the recommendation of the Special Inquiry Officer, approved by the Acting Regional Commissioner, the copy of which has been attached to this Brief, there is no indication that the Special Inquiry Officer took into account anything except the unsupported allegations contained in his file and the absolute denials by the plaintiff-petitioner. It is stated that "Despite the applicant's categorical denial of the allegations contained in the confidential and secret information * * * it is concluded that he has failed to establish that he has reasonable grounds on which to fear persecution. * * *" In other words, the Special Inquiry Officer has apparently used information which does not appear in the record, notwithstanding the absolute denial of the truth of the allegations. The allegations are not supported by any evidence. The denial of these remarks by the plaintiff-petitioner is more than adequately established.

It is urged that the applicant has proven his own reasonable fear of persecution if returned to his native country, by reason of his political differences with the Communist Government of China.

Respectfully submitted,

MARVIN M. NEUMAN
Attorney for Plaintiff-Petitioner

Dated: New York, New York
August 13, 1956.